



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

1200 Sixth Avenue, Suite 155  
Seattle, WA 98101-3188

ENFORCEMENT &  
COMPLIANCE ASSURANCE  
DIVISION

Reply To: 20-C04

**RETURN RECEIPT REQUESTED**

Mr. Michael Dunks  
Owner and Registered Agent  
Dunks Performance LLC  
2600 Main Street, Suite A  
Springfield, Oregon 97477

Re: Notice of Potential Violation and Opportunity to Confer

Dear Mr. Dunks:

The U.S. Environmental Protection Agency (EPA) has investigated and continues to investigate, Dunks Performance LLC ("Respondent" or "you"), for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q and its implementing regulations. Information currently available to EPA suggests that you may have committed violations of Sections 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. §§ 7522(a)(3)(A) and (B), as discussed in the enclosed Summary of Potential Violations ("Summary"). Specifically, information currently available to EPA suggests that you have removed and/or rendered inoperative, devices or elements of design installed on or in motor vehicles or motor vehicle engines and have manufactured, sold, offered to sell or installed parts or components where a principle effect of the part or component is to bypass, defeat or render inoperative devices or elements of design that were installed by the manufacturer in order to comply with CAA emission standards.

By this letter, EPA is extending to you an opportunity to advise EPA, via a conference call or in writing, of any further information EPA should consider with respect to the potential violations, including the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. If you wish to confer with EPA regarding the allegations in the enclosed Summary, please contact Ray Andrews at (206) 553-4252 or [andrews.raymond@epa.gov](mailto:andrews.raymond@epa.gov) **within ten days** of receipt of this letter. Contacts from legal counsel should be directed to Julie Vergeront, Assistant Regional Counsel at (206) 553-1497 or [vergeront.julie@epa.gov](mailto:vergeront.julie@epa.gov). If you choose to confer, please provide any written response you wish EPA to consider within 30 days of receipt of this letter, unless an extension has been requested and granted.

To the extent you submit information to EPA in response to this letter or as part of discussions that result from this letter, you may assert a business confidentiality claim covering part or all of the information provided to EPA by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret", "proprietary", or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by you and may be submitted separately to facilitate identification and handling by EPA. Information covered

by such a claim will be disclosed by EPA only to the extent and by the procedures set forth in statutes and 40 C.F.R. Part 2, Subpart B. Unless you make a claim at the time you submit the information in the manner described in 40 C.F.R. § 2.203(b), it may be made available to the public by EPA without further notice to you. 40 C.F.R. § 2.203; see also 41 Fed. Reg. 36902 (Sept. 1, 1976).

Thank you for your attention to this important matter.

Sincerely,

Morgan Jencius, Chief  
Air and Land Enforcement Branch

Enclosure

## Summary of Potential Violations

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Potential Violation and Opportunity to Confer to Dunks Performance LLC (“Respondent” or “you”).

### **Statutory and Regulatory Background**

1. Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder were enacted to reduce air pollution from mobile sources, including particulate matter (PM), non-methane hydrocarbons (NMHC), oxides of nitrogen (NO<sub>x</sub>), and carbon monoxide (CO). In creating the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).
2. EPA’s allegations here concern parts or components for motor vehicles and engines subject to emission standards. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. See CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B). As required by the CAA, the emission standards must “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
3. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” See also 40 C.F.R. § 85.1703 (further defining “motor vehicle”).
4. Under Section 202 of the CAA, 42 U.S.C. § 7521, EPA promulgated emission standards for PM, NMHC, NO<sub>x</sub>, and CO applicable to motor vehicles and motor vehicle engines, including heavy-duty diesel trucks, based on a vehicle’s or engine’s class and model year. See generally 40 C.F.R. Part 86.
5. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling, offering to sell, importing, or introducing or delivering for introduction into commerce any new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered by a certificate of conformity. EPA issues certificates of conformities to motor vehicle and motor vehicle engine manufacturers (also known as “original equipment manufacturers” or “OEMs”) under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions.
6. To obtain a certificate of conformity for a given motor vehicle or motor vehicle engine family, the original equipment manufacturer must demonstrate that such motor vehicle or motor vehicle engine will not exceed established emission standards for PM, NMHC, NO<sub>x</sub>, CO, and other pollutants. 40 C.F.R. §§ 86.004-21, 86.1844-01. The application for a certificate of conformity must include, among other things, identification of the covered engine family, a description of the motor vehicle or engine and its emission control systems, all auxiliary emission control devices (AECDs) and the engine parameters they monitor, as well as test results from a test

vehicle or engine showing that it meets the applicable emission standards. 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.1844-01.

7. An AECD is “any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.” 40 C.F.R. §§ 86.082-2, 86.1803-01.
8. “Element of design” means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. §§ 86.094-2, 86.1803-01.
9. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a certificate of conformity, motor vehicle and motor vehicle engine manufacturers use a variety of hardware and software devices and elements of design.
10. Manufacturers employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air and meet the emission standards in 40 C.F.R. Part 86. Such devices include exhaust gas recirculation (EGR), diesel oxidation catalyst (DOC), diesel particulate filters (DPFs), and selective catalytic reduction (SCR).
11. In addition to emission control hardware, various elements of design incorporated in motor vehicles, such as fuel mass, fuel injection pressure, and fuel injection timing can affect the quantity of regulated pollutants that are created by the engine. As an example, original equipment manufacturers of heavy-duty diesel trucks generally employ retarded fuel injection timing as an emission control method for NO<sub>x</sub>. See 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO<sub>x</sub> emission rates, with advanced timing settings being associated with higher NO<sub>x</sub> ...”).
12. Modern vehicles and engines are equipped with electronic control modules (ECMs) and onboard diagnostic systems (OBDS). ECMs continuously monitor engine and other operating parameters to manage the operation of the emission control systems and elements of design, such as fuel injection timing. The OBD detects and reports malfunctions of emission-related elements of design through a network of sensors installed throughout a motor vehicle or motor vehicle engine. CAA § 202(m), 42 U.S.C. § 7521(m); see 40 C.F.R. §§ 86.007-17, 86.010-18, 86.1806-05.
13. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), makes it unlawful for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” It is also a violation for any person to cause any of the acts listed above. 42 U.S.C. § 7522(a).
14. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), makes it unlawful for “any person to remove or render inoperative any device or element of design installed on or in a motor

vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.” It is also a violation for any person to cause any of the acts listed above. 42 U.S.C. § 7522(a).

15. Any person who violates Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), is subject to injunctive relief under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,819 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.
16. EPA may bring an enforcement action for violations of Section 203(a)(3) of the Clean Air Act under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524.

### **Proposed Findings**

17. Respondent is an automotive repair shop located at 222 28th Street, Springfield, Oregon 97477.
18. Respondent is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
19. On July 17, 2020, EPA sent an information request to Respondent under Section 208 of the CAA, 42 U.S.C. § 7542, requesting, among other things, information related to Respondent’s manufacture, sale, offer for sale, and installation of parts, components, and services (“products”) which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component.

### **Defeat Devices**

20. Based on Respondent’s response to EPA’s Information Request and other available information, from January 1, 2018 to July 17, 2020, Respondent manufactured, sold, offered for sale, or installed at least 52 parts or components designed and marketed for use with or as part of motor vehicles or motor vehicle engines. This includes:
  - a. At least **9** exhaust replacement pipes that allow the customer to remove the control equipment of the exhaust system such as the DOC and the DPF. An example of an exhaust replacement pipe that Respondent sold is the “Atlas 5” Alum Steel Downpipe Back Exhaust System w/Muffler” Part Number AFE49-03093. Respondent identified this part in response to EPA’s Information Request as a part that “permanently or temporarily changed, affected, or bypassed a motor vehicle’s DPF, catalyst and SCR systems.”
  - b. At least **16** EGR removal products that allow the customer to remove the EGR system. An example of an EGR removal product that Respondent sold is the “6.0L Ford EGR Delete Kit”, Part Number RIVRCD-6.0EGRK Respondent identified this part in response to EPA’s Information Request as a part that “permanently or temporarily change[s], affect[s], or bypass[es] a motor vehicle’s EGR.”
  - c. At least **27** tuning products that allow the customer to remove the emission control components. An example of such a tuning product that Respondent sold is “SCT X4

Performance Programmer”, Part Number SCT X4. Respondent identified this part in response to EPA’s Information Request as a part that “permanently or temporarily change[s], affect[s], or bypass[es] a motor vehicle’s EGR, DPF, SCR and catalyst.” The manufacturer’s website (<https://www.sctflash.com/products/sct-category-tuners/sctx4>) says, “The X4 Performance Programmer connects high-performance tunes to your vehicle for a boost in horsepower & torque. Awaken your engine to its real potential with preloaded, dyno-proven tune files through the easy-to-use functionality. Modify a variety of parameters at the touch of a button, all while monitoring gauges on a customizable display.”

21. These parts and components were designed and marketed for use on makes and models of motor vehicles and motor vehicle engines manufactured by entities such as Cummins Inc.; FCA US LLC and its predecessors; General Motors Co.; and Ford Motor Co.
22. These motor vehicles and motor vehicle engines were designed for transporting persons or property on a street or highway, and therefore are subject to motor vehicle and motor vehicle engine emission standards under the CAA Title II, Subpart A (42 U.S.C. §§ 7521–7554).
23. The original equipment manufacturers of these motor vehicles and motor vehicle engines sought and obtained certificates of conformity from EPA, thereby certifying that the motor vehicles and motor vehicle engines demonstrated compliance with applicable federal emission standards, including design configurations using elements of design such as fuel timing, EGRs, DPFs, SCRs, and OBD systems.
24. The parts and components referred to in Paragraph 20, above, when installed in or on motor vehicles, bypass, defeat, or render inoperative devices or elements of design that motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under CAA Title II, Subpart A (42 U.S.C. §§ 7521–7554).
25. Respondent knew or should have known that these parts or components were offered for sale or installed to bypass, defeat, or render inoperative devices or elements of design that motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under CAA Title II, Part A (42 U.S.C. §§ 7521–7554).
26. Therefore, from January 1, 2018 to June 17, 2020, Respondent committed at least **52** violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

#### Tampering

27. Based on Respondent’s response to EPA’s Information Request and other available information, from January 1, 2018 to July 17, 2020, Respondent knowingly removed or rendered inoperative one or more devices or elements of design installed on or in at least **6** motor vehicles or motor vehicle engines after sale and delivery to the ultimate purchaser.
28. The devices or elements of design removed or rendered inoperative by Respondent had been installed on or in such motor vehicles or motor vehicle engines in compliance with regulations promulgated under CAA Title II, Part A (42 U.S.C. §§ 7521–7554).
29. Therefore, from January 1, 2018 to July 17, 2020, Respondent committed at least **6** violations of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

